

H2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted
prevent clearly unwarranted
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]

Office: HONG KONG

Date: MAR 19 2003

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT: [REDACTED]

PUBLIC COPY

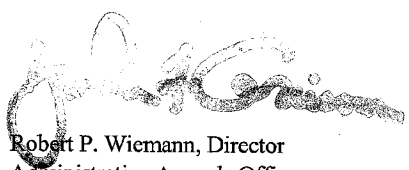
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Hong Kong, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Taiwan who made a material and willful misrepresentation at the time of his non-immigrant visa interview and at the time of his entry into the United States (U.S.). After being admitted to the U.S. as a B-2 visitor on November 3, 1988, the applicant worked illegally in a restaurant in the U.S. until 1992. The record further indicates that a visa petition filed by the applicant was refused based on the above information. The applicant subsequently changed his name from [REDACTED] to [REDACTED] and without acknowledging the prior refusal or informing the American Institute in Taiwan (AIT) of the prior refusal or the name change, he obtained two new non-immigrant visas under the new name. The record reflects that the applicant used these visas to make two trips to the U.S. in 1996 and 1999. The record additionally reflects that during the applicant's interview for an immigrant visa at the AIT on November 2, 2000, the applicant denied having been refused a visa previously. The applicant was consequently denied an immigrant visa and found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant's mother [REDACTED] is a U.S. citizen and that his father [REDACTED] is a U.S. legal permanent resident (LPR). The applicant is the beneficiary of an approved petition for alien relative. He seeks the above waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i).

On appeal, counsel erroneously asserts that the Officer in Charge's (OIC) decision "acknowledged that extreme hardship to the applicant's mother and father does exist and that for the reasons given, other siblings cannot provide the necessary assistance." See *Legal Brief*, dated September 6, 2002, at 3. To the contrary, the OIC's decision specifically stated that the applicant had failed to establish extreme hardship in his waiver application and that subsequent evidence failed to provide sufficient evidence of hardship. See *OIC Decision*, dated August 8, 2002, at 3.

Counsel additionally asserts that the applicant's parents are both ill and need the applicant's daily care and assistance. Counsel further states that the applicant "did not intend to misrepresent his record and that the omissions in his documents were not wilful on his part." See *Legal Brief*, dated September 6, 2002, at 3.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999), the Board of Immigration Appeals (the BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relatives are his U.S. citizen mother and his LPR father. Counsel states that the applicant's parents own a house in Minnesota and that they will continue to live in the United States. Counsel

asserts that the applicant's parents each have health problems and that they require day to day care from the applicant. Counsel submitted a letter from the applicant's mother's doctor, as well as affidavits from the applicant's two sisters and one brother regarding the medical condition of the applicant's parents and the family's inability to care for their parents without the applicant's help.

The applicant failed to establish that his parents would suffer extreme hardship based on the factors set forth in *Cervantes-Gonzales, supra*. The one paragraph doctor's letter submitted by counsel lacks probative value. The letter is general and fails to address the specific medical conditions and consequences of his parents' purported illnesses or the type of care needed. The letter additionally fails to provide information on how medical conclusions are reached, or the basis of the doctor's expertise and opinion that both of the applicant's parents require day to day care. Similarly, the applicant's siblings are not medical experts and their letters lack probative value regarding the medical condition of their parents.

Even if the applicant had established that his parents required day to day care, the applicant himself resides in Taiwan and he has never provided his parents with such care. As pointed out in the OIC decision, the record contains no convincing or new evidence to indicate that the applicant's presence in the U.S. would alleviate his parent's situation. See *OIC Decision*, dated August 8, 2002, at 3. This point is even more convincing in light of counsel's assertion that the applicant could reasonably work part time in addition to caring for his parents, so that he would not be a financial burden to family members. See *Legal Brief* at 3.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his U.S. citizen mother and LPR father would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.